

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLARD E. NICAISE
Claimant

VS.

McNALLY PITTSBURG MANUFACTURING CO.
Respondent

AND

ST. PAUL FIRE & MARINE INSURANCE
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 170,196

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Steven J. Howard on October 31, 1995. The Appeals Board heard oral argument on February 8, 1996. Appeals Board Member Duncan Whittier has recused himself from this proceeding and Appeals Board Member Pro Tem Ernest Johnson will serve in his place.

APPEARANCES

Claimant appeared by his attorney, Carlton Kennard of Pittsburg, Kansas. Respondent and its insurance carrier appeared by their attorney, John I. O'Connor of Pittsburg, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, David Mullies of Fort Scott, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The sole issue to be considered on appeal is the nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the arguments of the parties, the Appeals Board finds and concludes the decision of the Administrative Law Judge in finding claimant sustained a 22 percent permanent partial impairment of the left lower extremity should be affirmed.

The central issue argued on appeal relates to whether claimant suffered an injury to his left knee or whether, as claimant argues, suffered injury to both knees and is entitled

to a general body disability and resulting work disability. When the parties could not reach agreement on the extent of claimant's functional impairment, the Administrative Law Judge appointed Dr. Dale E. Darnell to act as an independent medical examiner. Dr. Darnell concluded that claimant's injury resulted in permanent injury only to the left knee. Claimant had a previous injury to his right knee, but Dr. Darnell concluded claimant suffered no additional permanent impairment of his right knee. Accordingly, he rated the left extremity only at 22 percent. The Administrative Law Judge based his Award upon the report and findings of the independent medical examiner. The Appeals Board agrees and hereby adopts as its own the findings of fact and conclusions of law stated in the Award entered by the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard dated October 31, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER PRO TEM

c: John I. O'Connor, Pittsburg, Kansas
Carlton W. Kennard, Pittsburg, Kansas
David Mullies, Fort Scott, Kansas
Ernest L. Johnson, Kansas City, Kansas
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director